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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,465	09/25/2000	Mikhail Prokopenko	169.1856	2125
5514	7590	08/28/2006	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			BELIVEAU, SCOTT E	
			ART UNIT	PAPER NUMBER
			2623	
DATE MAILED: 08/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/668,465

Applicant(s)

PROKOPENKO ET AL.

Examiner

Scott Beliveau

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6,9,11,12,14,17,19,20,22 and 25-78 is/are pending in the application.
- 4a) Of the above claim(s) 25-69 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,4,6,9,11,12,14 and 70-75 is/are allowed.
- 6) ☒ Claim(s) 17,19,20,22 and 76-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Miscellaneous

1. Please note that the examination art unit of record for this application has changed to 2623.

Response to Arguments

2. Applicant's arguments with respect to claims 17, 19, 20, 22, and 76-78 have been considered but are moot in view of the new ground(s) of rejection. The particular amendment does not render the claim as being statutory since a computer readable medium in light of the specification is set forth as an electromagnetic signal. Electromagnetic signals are non-statutory in accordance with the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility (OG Notices: 22 November 2005)

Election/Restrictions

3. Claims 1, 3, 4, 6, 9, 11, 12, 14, and 70-75 are allowable. The restriction requirement between groups, as set forth in the Office action mailed on 29 October 2003, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 25-69, directed to Group II, continue to remain withdrawn from further consideration because they do not require all the limitations of an allowable generic linking claim as required by 37 CFR 1.141.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim(s) presented in a continuation or divisional application include all the limitations of a claim that is allowable in the present application, such claims may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

4. This application contains claims 25-69 drawn to an invention nonelected with traverse on 04 May 2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 17, 19, 20, 22, and 76-78 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter and further lacks patentable utility. Claim 17 sets forth a computer readable medium that stores a computer program for enabling program selections. This does not necessarily equate to a computer readable-medium encoded with a data structure. Furthermore, the specification sets forth that a computer readable medium may comprise a radio or infra-red transmission channel (IA: Page 35, Lines 22-29). Claims that recite nothing but the physical characteristics of a form of energy, such as a frequency, voltage, or the strength of a magnetic field, define energy or magnetism,

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per se, and as such are nonstatutory natural phenomena. O'Reilly, 56 U.S. (15 How.) at 112-14. Moreover, it does not appear that a claim reciting a signal encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in Sec. 101. Accordingly, claims 17, 19, 20, 22, and 76-78 are not considered to be directed towards statutory subject matter.

Allowable Subject Matter

7. Claims 1, 3, 4, 6, 9, 11, 12, 14, and 70-75 are allowed.
8. The following is a statement of reasons for the indication of allowable subject matter:

The art of record either alone or in combination fails to adequately teach or suggest the claim taken as a whole and in particular the limitation of “forming sets of said attributes in response to said user selecting at least two of said programs having shared attributes, wherein each of said sets comprises at least two of said attributes”. With respect to the art of record and in particular the previously applied rejection under McClard, the examiner’s interpretation is that the creation of sets of attributes is formed in response to the user requesting a program recommendation as opposed to being in response to the particular intersection of attributes between programs. Accordingly, McClard fails to disclose or suggest the limitation wherein the “sets of said attributes are formed in response to that at least two of programs viewed by said user have shared attributes”.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 571-272-7343. The examiner can normally be reached on Monday-Friday from 8:30 a.m. - 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 571-272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197

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(toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Scott Beliveau".

SEB

August 23, 2006

Scott Beliveau
Primary Examiner
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